

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

JOSEPH ROBINSON,

Petitioner,

- vs -

9:06-CV-0496
(DNH)(DRH)

DALE ARTUS, Superintendent,

Respondent.

APPEARANCES:

JOSEPH ROBINSON
Petitioner, *pro se*
98-A-1604

DAVID N. HURD
United States District Judge

ORDER

Joseph Robinson ("Robinson" or "petitioner"), filed a Petition for a Writ of Habeas Corpus which was dismissed by Decision and Order filed January 9, 2007. Docket No. 7. Robinson has appealed that dismissal to the Second Circuit Court of Appeals and now seeks a Certificate of Appealability ("COA"). Docket No. 14.¹

28 U.S.C. § 2253(c)(1) provides in relevant part that:

Unless a circuit justice or judge issues a certificate of appealability, an appeal may not be taken to the court of appeals from –

- (A) the final order in a habeas corpus proceeding in which the detention complained of arises out of process issued by a State court; or
- (B) the final order in a proceeding under section 2255.²

¹ The Second Circuit dismissed Robinson's appeal without prejudice to its being reinstated upon decision by this Court granting or denying petitioner's request for a COA. Docket No. 13.

² Rule 22 of the Federal Rules of Appellate Procedure also provides that an appeal may not proceed "unless a circuit justice or a circuit or district judge issues a certificate of appealability under 28 U.S.C. § 2253(c)." See Fed. R. App. P. 22(b).

A COA may only be issued "if the applicant has made a substantial showing of the denial of a constitutional right." See 28 U.S.C. § 2253(c)(2).

After reviewing the relevant portions of the file in this action, and for the reasons set forth in the January 9, 2007 Order, the Court finds that Robinson has failed to make such a showing. Therefore, the Court denies his request.

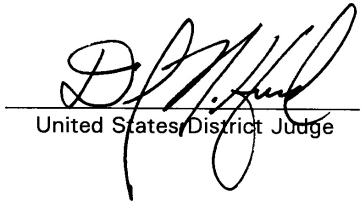
WHEREFORE, it is

ORDERED, that petitioner's Application for a Certificate of Appealability (Docket No. 14) is DENIED.

The Clerk is directed to serve a copy of this Order upon the petitioner in accordance with the Local Rules.

IT IS SO ORDERED.

Dated: August 21, 2007
Utica, New York.



United States District Judge